S.B. Civil Writ Petition No.2398/06
Dhola Ram Vs. Van Mandal Adhikari & Ors.

Date of Order : 29/03/2006

Hon'ble Mr. Justice Ajay Rastogi

Mr. Suresh Kashyap, for petitioner

Instant petition has been filed against the award passed by the Labour Court No.2, Jaipur dt.5th December, 2005 [Ann.5] whereby the claim of the petitioner-workman claiming his alleged termination w.e.f. 1st January, 1990 has not been considered the date of his termination which was referred to in the reference made by the appropriate government for adjudication of the dispute.

The petitioner-workman as alleged in the statement of claim was appointed on 1st April, 1987 as Cattle Guard @ Rs.22/- per day and had worked in different offices of the respondents and finally in his statement of claim in Para 1 he made specific averment that his services were terminated w.e.f. 1st January, 1990 and thereafter, he was not allowed to work despite request made by him, but at the time of filing affidavit in support of his claim Ann.3 Para 6 a specific statement has been made by the petitioner that in January and February, 1990 he

worked at Udaipur Wati Neem Ka Thana Road Side and in the month of March to June, 1990 he had worked at Mandawara I & II, Udaipur Wati Road Side and in July to September, 1990 at Mandawara II, III, IV Pancham Closer and Udaipur Wati Neem Ka Thana Road Side and October, 1990 to March, 1991 also at different sites and finally worked from April, 1991 to March, 1992. According to the affidavit furnished by the petitioner himself, there was no termination which was given effect to by the respondents w.e.f. 1st January, 1990. The respondents even in the written statement Ann.2 came out with the specific averment that his services were never terminated and he voluntarily for sometime has not turned up thereafter.

Learned Labour Court while adjudicating the dispute with respect to alleged termination of the petitioner-workman which was given effect to 1st January, 1990 recorded a finding that as per his own averment in his affidavit he had worked in Udaipur Wati upto March, 1992. In such fact situation, a reference has been made for adjudication of the dispute with regard to his alleged termination which was given effect to w.e.f. 1st January, 1990. Consequently, rejected his claim vide award dt.5th December, 2005 [Ann.5].

Shri Suresh Kashyap, counsel for petitioner submits that it was an error committed by the workman while referring to date of 1992. In fact, he had not worked after 1st January, 1990, as such the learned Labour Court has committed an error in recording finding of his working in the organization of the respondents till March, 1992. In my opinion, the submission made is factually incorrect. The affidavit filed by the petitioner Ann.3 Para 6 specific mention has been made about his working in the organization of respondents upto March, 1992 and which has been considered by the learned Labour Court while recording a finding of fact in the impugned award dt.5th December, 2005 [Ann.5], which is duly supported by material on record.

Counsel further submits that atleast his alleged termination referred to from March, 1992 atleast has not been adjudicated. In my opinion, the petitioner is always free to agitate his grievance under law with regard to his alleged termination if was given effect to from March, 1992 in accordance with law.

I find no substance in the writ petition and the same stands dismissed.

[Ajay Rastogi],J.

FRB